

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

CLEO FIDDEMON, :
Plaintiff : **CIVIL ACTION NO. 3:21-144**
v. : **(JUDGE MANNION)**
PATROLMAN ROBERT MAHOLIK, :
PATROLMAN JOSEPH WOZNIAK,
and WILKES-BARRE TOWNSHIP, :
Defendants :

ORDER

In accordance with the Memorandum issued this date, **IT IS HEREBY ORDERED THAT:**

1. The defendants' motion to dismiss, (**Doc. 7**), plaintiff's amended complaint, (**Doc. 4**), pursuant to [Federal Rule of Civil Procedure 12\(b\)\(6\)](#), is **GRANTED IN PART** and, **DENIED IN PART**.
2. The defendants' motion to dismiss plaintiff's false arrest claim against the defendant officers in Count I is **DENIED**.
3. The defendants' motion to dismiss plaintiff's 4th Amendment excessive force claim against the defendant officers in Count I is **DENIED**.
4. The plaintiff's claims in Count I, to the extent that they are asserted against the individual defendants in their official capacities, are **DISMISSED**.

Thus, the plaintiff's false arrest and excessive force claims against the defendant officers in Count I will proceed only to the extent that they are sued in their individual capacities.

5. The defendants' motion to dismiss the plaintiff's 5th Amendment due process claim in Count II is **GRANTED**.

6. The defendants' motion to dismiss plaintiff's 14th Amendment due process claim in Count II is **GRANTED**.

7. Count II of the amended complaint is **DISMISSED IN ITS ENTIRETY WITH PREJUDICE**.

8. The defendants' motion to dismiss plaintiff's claims for injunctive relief is **GRANTED**.

9. The defendants' motion to dismiss plaintiff's claims for declaratory judgment is **GRANTED**.

10. The defendants' motion to dismiss plaintiff's municipal liability claims against W-B Twp. in Count I is **DENIED**.

11. The plaintiff's claims for punitive damages against W-B Twp. and against the defendant officers in their official capacities are **DISMISSED WITH PREJUDICE**.

12. To the extent plaintiff seeks punitive damages against defendant officers in their individual capacities, defendants' motion to dismiss is **DENIED**.

Malachy E. Mannion
MALACHY E. MANNION
United States District Judge

DATED: April 13, 2022

21-144-01-Order